IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.20337 OF 2006
Date of Decision: *January 22, 2007*

Maha Singh & Others

.....PETITIONER(S)

VERSUS

State of Haryana & Others

.....RESPONDENT(S)

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CORAM: HON'BLE MR. JUSTICE K.S. GAREWAL
HON'BLE MR. JUSTICE AJAI LAMBA

PRESENT:- Mr. J.S. Yadav, Advocate, for the petitioners.

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AJAI LAMBA, J

This petition under Article 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of certiorari for quashing Notification dated 9.3.2004, Annexure P-8, issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as, `the Act') and Notification dated 31.5.2005, Annexure P-9, issued under Section 6 of the Act. On a perusal of the notifications, it is apparent that Market Committee, Farukhnagar, had requested the State Government to acquire land at the cost of the Committee for a public purpose namely, for extension of existing grain market at Farukhnagar.

Learned counsel appearing for the petitioners has raised two contentions namely, that the petitioners had built a house on part of the

land and therefore, the land to that extent should have been released. It has also been contended, while referring to Annexures P-6 and P-7, that even the respondents were not clear as to whether the land was required for the purpose for which the notifications for acquisition have been issued.

We have heard the learned counsel for the petitioners and gone through the record of the case.

It has been argued that the petitioners have a big family and their house falls within the area that is sought to be acquired, therefore, the land on which the house is located, is required to be excluded from acquisition.

Having considered the argument, we find that the land is required for a public purpose namely, for extension of existing grain market. It is the statutory right of the State, under the Act, to acquire land even though there are super structures, trees, orchards etc. on it. The State can resort to this statutory power in case the land is required for a public purpose. The Act itself and in particular, Section 23 of the Act provides for various matters required to be considered in determining the compensation which are the following:-

> "*first*, the market value of the land at the date of the publication of the [notification under Section 4, sub-section (1)];
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> *secondly*, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;
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> *thirdly*, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of

> severing such land from his other land;
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> *fourthly*, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;
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> *fifthly*, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and
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> *sixthly*, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land."

Thus, the petitioners have a right to claim compensation for the house. A perusal of the site plan appended with the petition as Annexure P-4 shows that it is a contiguous area that is sought to be acquired and the house falls within that area. Having thus found, we feel that the house cannot be excluded at the altar of public purpose.

This aspect of the matter has been considered by the Hon'ble Supreme Court of India in various judgments as also by this Court. Reference may be made to a judgment of a Division Bench of this Court wherein Sohan Lal & Others Vs. State of Haryana & Others, 1989 PLJ 4, it has been held in the following terms:-

> "7. The other argument raised is that the petitioners purchased small pieces of land in a privately developed colony and have built their houses, and the acquisition is also for the same purpose. If petitioners built their houses before the acquisition, they

> would get compensation for the same but it cannot be said that the Government is not entitled to acquire land for residential/commercial purposes and to frame a planning scheme in this behalf. The purpose of acquisition cannot be said to be beyond the scope of authority because it is for public purpose."

In another later judgment i.e. Hira Lal Vs. State of Haryana & Another, AIR 1994 Punjab & Haryana 101, it has been held that there is no bar in acquiring built up area for residential/ commercial purposes for implementing the planned scheme. Land owners-claimants, who are owners of houses which have been acquired, will get adequate compensation not only for the land under the houses but also for the super structure raised thereon.

The Hon'ble Supreme Court of India in the case of M/s Anand Buttons Ltd. Vs. State of Haryana, 2005 AIR (SC) 565 has held in the following terms in Paras 11 and 13:-

> "11. This reasoning of the High Court cannot be faulted for the simple reason that the authority, who has to carry out the planned development of the industrial estate, is in the best position to judge as to which land can be exempted from the acquisition without jeopardizing the development scheme. It is not possible for the court to sit in appeal over the exercise of such satisfaction by the authority vested with the task of implementing the development plan.
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> 13. It is trite law that not only land but also structure on land can be acquired under the Act. As to whether in a given set of circumstances certain land should be exempted from acquisition only for the reason that some construction had been carried out, is a matter of policy, and not of law. If after considering all the circumstances, the State Government has taken the view that exemption of the lands of the appellants would render askew the development scheme of the industrial estate, it is not possible for the High

> Court or this Court to interfere with the satisfaction of the concerned authorities. We see no ground on which the appellants could have maintained that their lands should be exempted from acquisition. Even if three of the parties had been wrongly exempted from acquisition, that gives no right to the appellants to seek similar relief."

Considering the provisions of Section 23 of the Act as also the law on the issue, it is clear that the petitioners have no statutory right to have their land released from acquisition or for quashing of the acquisition proceedings.

Now we advert to the second argument of the learned counsel to the effect that perusal of Annexures P-6 and P-7 dated 26.6.2005 and 29.8.2005 respectively shows that even the respondents were not clear as to whether the land was required for the purpose for which it had been acquired.

We have gone through Annexure P-6 which is a letter addressed by the Financial Commissioner & Principal Secretary, Government of Haryana, Agriculture Department to Chief Administrator, Haryana State Agriculture Marketing Board, Panchkula. Vide the communication, the Financial Commissioner sought clarifications and detailed comments with regard to the purpose of acquisition. Perusal of Annexure P-7 shows that the Zonal Administrator had merely sent a copy of letter dated 27.6.2005 (Annexure P-6) and reply given by the Chief Administrator, Haryana State Agriculture Marketing Board, Panchkula to the Government for further action. We are of the considered opinion that this inter department communication cannot possibly create a right in favour of the petitioners in the face of acquisition proceedings and publication of notifications.

Having considered the matter at length, we find that no fault can be found with the exercise of statutory powers exercised by the State in acquiring the land of the petitioners. The proceedings had commenced with publication of notification under Section 4 of the Act on 9.3.2004. Objections under Section 5-A of the Act, admittedly, have not been filed. Notification under Section 6 of the Act was published on 31.5.2005 and from the pleadings, it is gathered that even the award has been announced.

In view of the above, finding no merits in this petition, the same is hereby dismissed.

(K.S. GAREWAL)
JUDGE

(AJAI LAMBA)
JUDGE

January 22, 2007
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